

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**IN RE GENETICALLY
MODIFIED
RICE LITIGATION**

**4:06 MD 1811 CDP
ALL CASES**

**JOINT STATEMENT OF LEAD COUNSEL
FOR SEPTEMBER 20, 2007 STATUS CONFERENCE**

Pursuant to this Court's direction in Case Management Order No. 3 ("CMO3") (D.I. 292), Lead Counsel for Plaintiffs and Defendants have met and conferred on the issues outlined in the Order and report to the Court as follows:

I. PROGRESS IN CASE

A. Answers to the Consolidated Complaint

On June 21, 2007, Bayer CropScience, LP, Bayer CropScience, Inc., Bayer CropScience Holding, Inc., Bayer CropScience, LLC and Bayer Corporation, the "Domestic Bayer Defendants" and Defendant Starlink Logistics Inc. answered the Master Consolidated Class Complaint (D.I. 264) (the "Complaint"). Those Answers are located in the Master Case Docket at D.I. 315 and D.I. 309, respectively. The same day Bayer CropScience GmbH, Bayer CropScience AG, Bayer BioScience NV, and Bayer AG, the "Foreign Bayer Defendants" moved to quash service and to dismiss the Complaint on jurisdictional grounds (D.I. 310 through D.I. 314). The parties agreed to postpone briefing on those motions at that time pending actual service of defendants.

B. Service of Foreign Defendants

Service pursuant to the Hague Convention was made on Bayer CropScience AG on August 2, 2007, Bayer BioScience NV on August 3, 2007, and Bayer AG on August 11, 2007. Those Defendants dispute whether service was perfected pursuant to Hague Convention protocols. Those Defendants filed a Motion to Dismiss for Lack of Jurisdiction on September 5, 2007 (D.I. 353). Bayer CropScience GmbH has been merged into Bayer CropScience AG and is no longer in existence. For that reason it has not been served and has not answered or joined in the motion to dismiss. The parties have consented to staying determination of the Motion to Dismiss until jurisdictional discovery progresses and a schedule for submission of evidence and briefing is agreed upon or ordered by Court (D.I. 355).

C. Discovery

1. Jurisdictional Discovery.

Plaintiffs served the Domestic Bayer Defendants with Interrogatories and Requests for the Production of Documents regarding personal jurisdiction over the foreign defendants. Those defendants have filed responses and are producing documents on a rolling basis. On July 27, 2007, Defendants produced approximately 22,664 pages. On August 3, 2007, Defendants produced approximately 7,438 pages. On August 17, 2007, Defendants produced approximately 27,004 pages. On August 31, 2007, Defendants produced approximately 8,433 pages. The next production is expected on September 14, 2007, and will be approximately 100,000 pages. Additional productions are expected every ten to fourteen days until complete. The parties have met and conferred to delineate the precise information sought and to attempt to resolve objections. Substantial progress has been made, but the parties continue their efforts to resolve their differences. It is anticipated that production by Domestic Bayer Defendants will be substantially completed by November 15, 2007, subject to refinement of the requests agreed to in the course of meet and confer efforts and the resolution of objections.

Contemporaneous with these jurisdictional discovery efforts, the parties continue to negotiate a prospective compromise with respect to the jurisdictional issues regarding the Foreign Bayer Defendants. The parties will advise the Court as soon as possible whether these negotiations are ultimately successful or whether motion practice regarding this Court's jurisdiction over the foreign Bayer defendants will need to proceed.

2. Class and Merits Discovery.

a. Discovery from Plaintiffs named in the Consolidated Complaint.

Pursuant to CMO 3, all plaintiffs named in the Consolidated Complaint ("Class Plaintiffs") were to complete the Plaintiff Fact Sheet forms ("PFS Forms"), and produce the documents requested therein, no later than June 29, 2007. All Class Plaintiffs served their PFS Forms upon defendants on June 29, 2007, and voluntarily supplemented their responses with additional information responsive to questions asked on the PFS, at defendants' request, on August 8, 2007 and August 15, 2007.

Class Plaintiffs agreed to produce all documents and information relating to all of their row crop farming operations from 2003 to the present – in addition to the four categories of documents requested in the PFS forms. The Class Plaintiffs' expanded document production does not include their federal and state individual income tax returns. A dispute remains over whether the Class Plaintiffs should produce all or portions of their tax returns. Defendants agreed to an extension of the June 29, 2007 deadline by which the four categories of documents requested in the PFS form were to be produced. Class Plaintiffs began producing documents on June 29, 2007, and continued to produce their expanded scope of documents throughout the summer, producing additional groups of documents to defendants, on a rolling basis, on July 3, 2007, July 13, 2007, July 19, 2007, July 30, 2007, August 8, 2007, August 15, 2007, August 16,

2007, August 23, 2007, and September 4, 2007. To date, Plaintiffs have produced over 83,500 pages of hard copy documents and more than 11,100 pages of electronic discovery. In a letter dated September 4, 2007, counsel for Plaintiffs represented that the production of electronic documents was complete. The documents produced between June 29 and September 4, 2007, include those responsive to the four categories of documents requested in the PFS forms.

On or before September 20, 2007, Defendants will serve written discovery on each of the Class Plaintiffs. Pursuant to CMOs 1 and 3, responses to those document production requests will be due within 45 days of service and interrogatory responses will be due within 60 days of service. In an effort to expedite the case, however, plaintiffs have agreed to exercise their best efforts to expedite their responses to these written discovery requests.

b. Discovery from Producer Plaintiffs Not Named in the Consolidated Complaint.

Pursuant to CMO 3, rice producers named as plaintiffs in individual actions – but not included as named plaintiffs in the Consolidated Complaint (“Non Class Plaintiffs”) were to provide completed Plaintiff Fact Sheet (“PFS”) forms no later than August 6, 2007¹. By agreement, Non Class Plaintiffs began proffering their completed PFS forms to defendants on August 6, 2007 and have continued that production throughout August and September. To date, approximately 242 PFS forms have been provided (including 26 from the Class Plaintiffs as set forth in paragraph 2(a) above.) Lead Counsel for plaintiffs have advised defendants’ Lead Counsel that responses from the remaining Non Class Plaintiffs are ongoing and should be substantially completed after the harvest season is over and no later than December 15, 2007. Counsel continue to meet and confer as to the completeness of the responses and the need, if any, for supplementation.

c. **FSA File Inspections.** Pursuant to CMO 1, all Class Plaintiffs timely executed and delivered to counsel for Defendants authorizations to permit discovery from federal agencies regarding their participation in federal support or subsidy programs. Inspection of such files has been delayed while the parties attempted to resolve administrative and privacy issues raised by the FSA/USDA. The parties, in cooperation with FSA/USDA, are attempting to resolve these issues to permit production and copying of the relevant documents and believe a prompt and satisfactory resolution is likely that will not delay any other aspect of the case.

d. **Merits Discovery from Defendants.** On July 6, 2007 plaintiffs served their Request for Documents from All Domestic Defendants, except Starlink Logistics, Inc. On August 20, 2007 the Domestic Bayer Defendants served their written responses to plaintiffs' request for production. The Domestic Bayer Defendants have included documents also responsive to merits document production in their productions in response to jurisdictional discovery, but have focused on providing the responses to jurisdictional discovery. The production of documents responsive to merits requests will continue on a rolling basis until complete. Most documents already produced in the response to jurisdictional discovery are responsive to the merits discovery. On July 20, 2007, Plaintiffs served their First Set of Interrogatories on All Defendants Except Starlink Logistics, Inc. On September 10, 2007, Defendants served their responses. Counsel continue to meet and confer in an effort to resolve issues relating to the Domestic Bayer Defendants' discovery responses.

e. **Depositions.** A Rule 30(b)6 deposition is scheduled for September 25, 2007 at Virginia Polytechnic Institute and State University in Blacksburg, Virginia. Lead Counsel are coordinating with the parties in the scheduling of additional individual and 30(b)(6)

¹ While CMO 3 required Non Class Plaintiffs to provide completed PFS forms to defendants, those Non Class Plaintiffs were relieved of the requirement of responding to the four document requests in the PFS.

depositions, including the depositions of the Class Plaintiffs and Bayer representatives. Lead Counsel will draft and disseminate protocols governing conduct of depositions to ensure a fair and orderly procedure, giving all interested parties an opportunity to examine witnesses.

f. **Subpoena duces tecum.** Plaintiffs have served the following subpoena *duces tecum*:

Third Party	Date Served
Arkansas State Plant Board	August 1, 2007
BASF Corporation	July 26, 2007
Dale Bumpers College of Agricultural Food and Life Science	August 1, 2007
Dale Bumpers National Rice Research Center	August 1, 2007
Horizon Ag	July 23, 2007
Louisiana State University and Agricultural and Mechanical College	August 21, 2007 (re: merits) and August 22, 2007 (re: jurisdiction)
Monsanto Company	July 30, 2007
Riceland Foods, Inc.	August 1, 2007
RiceTec, Inc.	July 24, 2007
Virginia Polytechnic Institute and State University	July 24, 2007

Lead Counsel for Plaintiffs are working with counsel for the subpoenaed third parties (“Third Parties”) to attempt to resolve disputes regarding these subpoenas as they arise. Certain Third Parties have begun rolling productions of documents responsive to the subpoenas. All documents produced will be served upon Lead Counsel and made available to all parties promptly after receipt from the subpoenaed parties.

g. **Sharing of Discovery Obtained in Consolidated Action with All Parties.**

By agreement of Lead Counsel, copies of all discovery, discovery responses and documents produced by defendants or by any third party pursuant to subpoena, will be made available to all parties in accordance with a protocol to be developed by Lead Counsel.

II. Scheduling

A. Non Producer Cases

1. Pending Motions to Remand

Presently pending before this Court are motions to remand the following four (4) non producer cases: *The Simpson Company v. Bayer CropScience, L.P., et al.*, Case No. 4:07 CV 00875 CDP; *Texana Rice Mill, Ltd., et al v. Bayer CropScience, L.P., et al.*, Case No. 4:07 CV 00416 CDP; *Beaumont Rice Mills, Inc. v. Bayer CropScience, L.P., et al.*, Case No. 3:06 CV 00802 CDP; and *Randy Schafer, et al. v. Riceland Foods, Inc., et al.*, Case No. 4:06 CV 1407 GH.

2. Case Management Order No. 4.

Lead Counsel, after consulting with other plaintiff and defense counsel, have agreed on provisions to promote the efficient operation of the litigation, including specific revisions to prior orders relating primarily to the Non Producer Parties in Non Producer cases. Those provisions are contained in Proposed Case Management Order No. 4 (“CMO 4”), which is attached hereto. Lead Counsel have agreed to the provisions of CMO 4 and ask this Court to adopt them. While Lead Counsel have tried to develop a consensus, there may be some issues on which a consensus does not exist. CMO 4 reflects Lead Counsel’s attempt to accommodate all parties’ desires while still promoting efficiency and avoidance of duplication and burden on parties and witnesses.

3. Non Producer Cases.

Under the provisions of CMO 4, the Non Producer Parties are permitted to proceed with discovery in the Non Producer cases directed to any parties in the litigation except the Producer Plaintiffs. The Non Producer Parties are permitted under CMO 4 to serve interrogatories, requests for production of documents, and requests for admission only upon the Defendants in the Consolidated Complaint. The Non Producer Parties may also proceed with discovery from

third parties. Deposition discovery and the issuance of non-party subpoenas are subject to coordination with Lead Counsel in order to promote efficiency and prevent duplication.

Because discovery undertaken in the Consolidated Action will substantially reduce the need for additional discovery in the Non Producer cases, Lead Counsel propose that discovery initiated by Non Producer Parties directed to Producer Plaintiffs and the defendants named in the Consolidated Complaint be limited as set forth in the attached CMO 4. Most importantly, discovery in those cases will not be duplicative of discovery in the Consolidated Action. Non Producer Parties, however, shall be provided responses to all discovery and documents produced by Defendants in the Consolidated Complaint and shall be entitled to participate in all depositions of such Defendants and non-parties. Counsel for Non Producer Parties may also request of Lead Counsel that specific individual or Rule 30(b)(6) depositions be scheduled. Lead Counsel have agreed to consider such requests and attempt to accommodate those requests to the extent that they efficiently move the litigation forward. The necessity for, and any limitations upon, additional discovery by Non Producer Parties directed to Producer Plaintiffs and the Defendants in the Consolidated Complaint should be reviewed as discovery progresses and be subject to further determination by the Court after a report by Lead Counsel and interested Non Producer Parties.

B. Individual Producer Cases.

Pursuant to Paragraph IX.C. of CMO 3, the Court has requested the parties to this action “propose a schedule for all actions necessary to complete pleadings, motions and discovery in the individual producer cases.” After careful consideration, defendants’ and plaintiffs’ Lead Counsel believe that the efficient administration of these actions, given plaintiffs’ claims under Rule 23 of the Federal Rules of Civil Procedure, can best be achieved by this Court extending its stay of proceedings in each of the individual producer cases until after this Court adjudicates

Class Plaintiffs' motion for class certification, or until further order of the Court, except as set forth below.

1. Discovery.

Discovery undertaken in the Consolidated Action will substantially reduce the need for discovery on many issues in the individual cases, and, as set forth above, will be made available to counsel for all parties, including counsel for the Individual Producer Plaintiffs, in accordance with a protocol to be developed by Lead Counsel. Discovery in the Individual Producer cases should be stayed pending further order of Court, except for completion of a PFS by all Individual Producer Plaintiffs and the production of documents and depositions by the fifteen such plaintiffs selected by Defendants pursuant to CMO 3.

IV. Other Issues

Lead Counsel for plaintiffs advise the Court that on August 24, 2007, they launched a case information website, which can be found at www.bayerricelitigation.com.

Dated this 14th day of September, 2007.

Respectfully Submitted,

/s/ Don M. Downing

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Lead Counsel For Defendants

CERTIFICATE OF SERVICE

This is to certify that I have this 14th day of September, 2007, electronically filed a copy of the foregoing with the Clerk of Court to be served by operation of the Court's electronic filing system upon the parties of record.

/s/ Don M. Downing

Don M. Downing

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**IN RE GENETICALLY MODIFIED RICE
LITIGATION**

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PROPOSED CASE MANAGEMENT ORDER NO. 4

The Court, having been advised by Lead Counsel that an order clarifying discovery and other obligations of counsel and the parties is appropriate and, having reviewed their proposal, enters this Case Management Order No. 4. This Case Management Order No. 4 supplements the previous Case Management Orders and the Order Appointing Leadership Counsel entered in MDL 1811 and, unless specifically stated or otherwise modified herein, all provisions of those previously entered Orders remain in full force and effect.

IT IS HEREBY ORDERED:

1. Definitions. For the purposes of this Order, the following definitions apply:

(a) “Producer Plaintiff” means those plaintiffs who are named in the Master Consolidated Class Action Complaint (“Master Action”) and Plaintiffs in individual producer cases;

(b) “Defendants in the Master Action” means those defendants who are named as Defendants in the Master Action;

(c) “Non-Producer Party” means all parties who are not Producer Plaintiffs or Defendants in the Master Action;

(d) “Non-Producer Case” means any case other than the Consolidated Action or the individual producer cases.

2. Written Discovery in Non-Producer Cases.

(a) Discovery Among and Between Non-Producer Parties. Notwithstanding anything to the contrary in prior Case Management Orders and in the provision of the Court’s Order Appointing Leadership Counsel stating that “no papers shall be served or filed, and no process, discovery, or other procedure shall be commenced by any counsel other than Lead Counsel,” all Non-Producer Parties in Non-Producer Cases may in those cases, through counsel, file and serve requests for production, interrogatories and requests for admission on any Non-Producer Party in those cases. Copies of such discovery and responses to such discovery requests shall be served upon Plaintiffs’ and Defendants’ Lead Counsel. Limits on discovery, as set forth in previous orders, and the terms of the Confidentiality Agreement and Protective Order shall remain in full force and effect. Notwithstanding the limitations upon the number of interrogatories under paragraph B.3 of Case Management Order No. 1, any Non-Producer Party in a Non-Producer Case may serve up to twenty-five (25) interrogatories upon any Non-Producer Party and, upon good cause shown, may seek leave to serve additional interrogatories upon any such party. These interrogatories shall be in addition to those served in the Master Action. With respect to Requests for Admissions (“RFAs”) and Requests for Production (“RFPs”), no limit shall be placed upon the number of RFAs and RFPs that may be served by any Non-Producer party in a Non-Producer Case on a Non-Producer Party. These RFAs and RFPs shall be in addition to those served in the Consolidated Action.

(b) Discovery Among and Between Non Producer Parties and Defendants in the Master Action. CMO 3 ¶¶B. 3,4, and 7 are hereby modified with respect to Non Producer

Parties and Defendants in the Master Action who are also defendants in Non Producer Cases as follows:

3. Interrogatories. Each party in a Non Producer Case may propound up to ten Interrogatories (including sub parts) on defendants in the Master Action, and defendants in that Action may propound the same number on each other party to that case. Said Interrogatories shall not be duplicative of discovery previously served in any other case or in the Master Action. Responses shall be served within forty-five days.

4. Request for Admissions. Each party in the Non Producer Case may propound up to 20 Requests for Admission on defendants in the Master Action, and defendants in that Action may propound the same number on each other party to that case. Said Requests shall not be duplicative of Requests served in any other case or the Master Action. Responses shall be served within forty-five days.

7. Requests for Production of Documents and Things. Each party in a Non Producer Case may propound up to 20 Requests for Production of Documents and Things on defendants in the Master Action, and defendants in that Action may propound the same number on each other party to that case. Said Requests shall not be duplicative of discovery served in any other case or the Master Action. Responses shall be served within forty-five days.

All further discovery among and between Non-Producer Parties and Defendants in the Master Action is stayed until further Order of Court subject to the provisions of paragraphs 4 and 5 herein.

(c) Discovery by Non-Producer Parties to Producer Plaintiffs. All such discovery is stayed until further Order of Court. By agreement of Lead Counsel, copies of all discovery, discovery responses and documents produced by defendants or by any third party pursuant to subpoena, will be made available to all parties in accordance with a protocol to be developed by

Lead Counsel subject to compliance with the terms of the Confidentiality Agreement and Protective Order by the Non-Producer Parties and their counsel.

3. Pleadings and Motions in Non-Producer cases. Notwithstanding the provisions of any previous case management orders entered in this case, any Non-Producer Party may in a Non-Producer Case file pleadings, including cross claims and counterclaims, and motions that relate to factual or legal issues specific to that case only. Such pleadings, motions and responses thereto shall be served on Lead Counsel, but need not be coordinated through Lead Counsel. Such pleadings, motions and responses thereto must otherwise comply with all other deadlines and requirements of the Court's case management orders.

4. Depositions.

(a) Depositions by Non-Producer Parties of witnesses other than Producer Plaintiffs and Defendants in the Master Action. Counsel for Non-Producer Parties may initiate depositions in accordance with Rules 30 and 45 on a person or entity that is not a Producer Plaintiff or Defendant in the Master Action or an agent, employee, officer, director or otherwise affiliated with Producer Plaintiffs or Defendants in the Master Action that relate to factual or legal issues specific to that case only. Prior to serving any notice of deposition or subpoena to compel attendance, counsel for Non-Producer Parties shall confer with Lead Counsel to coordinate the scheduling of all depositions so that the depositions are taken in an orderly manner that will facilitate the progress of the litigation, minimize, to the extent possible, the burdens on parties and witnesses and comply with the general requirement of one deposition per witness. If counsel for the Non-Producer Party and Lead Counsel are unable to agree on scheduling or other issues related to any deposition, the Non-Producer Party may file a motion for leave to proceed with the deposition.

Counsel for Non Producer Parties may request that Lead Counsel schedule the depositions of Defendants in the Master Action (or persons affiliated with them). Lead Counsel shall meet and confer in good faith with the requesting counsel and attempt to accommodate such requests where they are consistent with the efficient prosecution of the litigation and do not cause undue burden on the parties or the witnesses.

(b) Participation in depositions taken in connection with the Master Class Action.

Counsel for Non-Producer Parties are permitted to attend and examine witnesses at any oral deposition taken in the Master Action, except those of Producer Plaintiffs and pursuant to protocols to be established by Lead Counsel. Counsel for the Non-Producer Parties and Lead Counsel are directed to coordinate and meet and confer prior to any oral depositions under Rule 30 to establish procedures so as to permit not only the completion of the deposition pursuant to Rule 30, but also to permit full participation as needed by counsel for all Non-Producer parties as well as counsel for parties in the Master Complaint.

5. Rule 45 Non-Party Document Subpoenas. Any party in a non producer case may serve a Rule 45 document subpoena on a person or entity that is not a party or an agent, employee, officer, director or otherwise affiliated with any party; provided that prior to serving any such subpoena counsel consult with Lead Counsel in order to avoid duplication and undue burden on such non parties. Any information or materials obtained by the party issuing the subpoena from such non-parties shall be provided to all Lead Counsel and counsel for all Non Producer Parties within five business days of receipt from the person or entity subpoenaed or, for documents received prior to this order, within five business days of the entry of this order. Any information or materials obtained by a Producer Plaintiff or a Defendant in the Consolidated Action pursuant to subpoena shall be provided to Lead Counsel and to counsel for all Non

Producer Parties within five business days after receipt of a request for such information and materials.

6. Amendment to Document Protocol. The attached Agreed Amendment to Stipulation and Agreed Order Regarding Protocol for Production of Documents and Information both in Hard Copy and in Electronic Format is to be applied in the Non-Producer Cases according to its terms.

7. Discovery Does Not Affect Remand. Discovery by any party in any case in which a motion to remand to state court is filed or is pending does not affect or waive any party's positions with respect to such requested remand.

8. Settlement. The Non-Producer Parties need not consult with, and are not represented by, Lead Counsel in any settlement negotiations related to their individual actions, but are encouraged to meet and confer with Lead Counsel where it would promote settlement of any issues related to this litigation.

9. Initial Disclosures. The Non-Producer Parties to any Non-Producer Case transferred to this Court after the entry of this Case Management Order No. 4, shall serve their Rule 26(a)(1)(A) disclosures within twenty (20) days of the docketing of that case in this Court.

SIGNED this _____ day of September, 2007.

JUDGE CATHERINE D. PERRY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE GENETICALLY MODIFIED)	4:06MD 1811 CDP
RICE LITIGATION)	
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This pleading pertains to:)	
)	
TILDA LTD.)	
)	
vs.)	No. 4:07-CV-0457 CDP
)	
RICELAND FOODS, INC.;)	
PRODUCERS RICE MILL, INC.;)	
BAYER CROPSCIENCE, INC.; and)	
BAYER CROPSCIENCE LP)	
)	
)	
VEETEE RICE LIMITED)	
)	
vs.)	No. 4:07-CV-01211 CDP
)	
RICELAND FOODS, INC.;)	
PRODUCERS RICE MILL, INC.;)	
RIVIANA FOODS, INC.; and)	
BAYER CROPSCIENCE LP)	
)	
)	
BEAUMONT RICE MILLS, INC.)	
)	
vs.)	No. 4:07-CV-00524 CDP
)	
BAYER CROPSCIENCE LP;)	
BAYER CROPSCIENCE HOLDING)	
CORPORATION; BAYER)	
CORPORATION; STARLINK)	
LOGISTICS, INC.; TEXAS RICE)	
IMPROVEMENT ASSOCIATION;)	
RAYMOND FRANZ; JACKO)	
GARRETT; JOHN GRIFFIN; and)	
RICE BELT WAREHOUSE, INC.)	
)	

THE SIMPSON COMPANY

vs.

BAYER CROPSCIENCE LP;
BAYER CROPSCIENCE HOLDING,
INC.; BAYER CORPORATION;
BAYER CROPSCIENCE USA, LP;
AVENTIS CROPSCIENCE USA
HODLING, INC. a/k/a STARLINK
LOGISTICS, INC.; TEXAS RICE
IMPROVEMENT ASSOCIATION;
JACKO GARRETT; and
STARLINK LOGISTICS, INC.

TEXANA RICE MILL, LTD

vs.

TEXANA RICE, INC.; BAYER
CROPSCIENCE LP; BAYER
CROPSCIENCE HODLING, INC.;
BAYER CORPORATION; BAYER
CROPSCIENCE USA, LP; AVENTIS
CROPSCIENCE USA HOLDING,
INC. a/k/a STARLINK LOGISTICS,
INC.; TEXAS RICE IMPROVEMENT
ASSOCIATION; JACKO GARRETT;
DAVID MURRELL; WINCO
AGRIPRODUCTS, INC.; and
STARLINK LOGISTICS, INC.

No. 4:07-CV-00875 CDP

No. 4:07-CV-00416 CDP

**AGREED AMENDMENT TO STIPULATION AND AGREED ORDER REGARDING
PROTOCOL FOR PRODUCTION OF DOCUMENTS AND INFORMATION BOTH IN
HARD COPY AND IN ELECTRONIC FORMAT**

Pursuant to the Court's directive, as set forth in Case Management Order No. 3 (D.I. 292),
counsel for the parties to the non-producer plaintiff cases listed in the style of this pleading (the
"Non-Producer Parties"), have conferred with Lead Counsel for plaintiffs and defendants concerning

a proposed amendment to the Stipulation and Agreed Order Regarding Protocol for Production of Documents and Information Both in Hard Copy and in Electronic Format entered by this Court on June 5, 2007 (“Discovery Protocol”) (D.I. 291).

The proposed amendment contained herein will apply only to the Non-Producer Parties. To the extent not modified by this proposed amendment, the terms and provisions of the Discovery Protocol shall remain in effect as to the Non-Producer Parties.

The Non-Producer Parties have agreed to the following amendments to the Discovery Protocol:

1. The Non-Producer Parties shall not, as part of their initial disclosure obligations or in initial responses to requests for production or other written discovery, be required automatically to produce any documents in the manner set forth in Section C of the Discovery Protocol. Rather, the Non-Producer Parties may produce responsive, non-privileged discovery documents in optical character recognition (OCR) scanned TIFF files in such a manner as to allow such files to be text-searchable and, in either case, otherwise in accordance with Section E of the Discovery Protocol.

2. If, after receiving initial responses to discovery, a Non-Producer Party, in its sole discretion, concludes, on a good faith basis, that it needs to acquire copies of the actual Electronic Documents in electronic or native format – or needs the Metadata, as defined by the Discovery Protocol, associated with those documents – that party may request, in writing, that the producing party proffer those Electronic Documents in the format mandated by the Discovery Protocol. The written request shall set forth the Bates Number range(s) of the documents sought. Upon receipt of a written request to provide documents pursuant to the Discovery Protocol from the requesting party, the producing party shall have a reasonable time, but in no event less than thirty

(30) calendar days, to produce the documents in the format mandated by the Discovery Protocol, or to contest or otherwise challenge the request.

3. Nothing herein shall be construed to prohibit a Non-Producer Party from producing documents, at any time or to any party, in the manner set forth in Discovery Protocol if the producing party so chooses. Rather, the Non-Producer Parties agree that the production contemplated in Paragraphs 1 and 2 above shall be an acceptable alternative to production under the Discovery Protocol.